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ABSTRACT

The flow of news and information across national boundaries has been, for the last decade, a major issue in United Nations international policy debates. These debates have highlighted the need for new legal instruments to govern world communications. In the current debate on information rights, Article 19 of the Universal Declaration of Human Rights establishes one world for the purpose of receiving and imparting information as an individual right. Although many nations accept in principle the right to receive and impart information across national boundaries, there is a substantial disagreement about the responsibilities of individuals, groups, and nations. The concept of the right to communicate has thus arisen, with two perspectives prominent in its formulation: a comprehensive perspective on morals and ethics, the content of culture, and implicit right to communicate; and a multi-tiered perspective based on the assumption that communication needs in any democratic society must be rooted in specific rights. The concept of the right to communicate perhaps offers the possibility of wider accord on the rights and responsibilities of the mass media, and could provide the kind of ethical and even legal framework for solving problems in international and national communication. (HOD)

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INTERNATIONAL COMMUNICATION DIVISION

The Problem of International Discourse: Search for Cultural, Moral and Ethical Imperatives

by

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Presented to the International Communication Division, Association for Education in Journalism and Mass Communication National Convention, Corvallis, Oregon, August, 1983.

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INTERNATIONAL COMMUNICATION DIVISION

A B S T R A C T

THE PROBLEM OF INTERNATIONAL DISCOURSE: SEARCH FOR CULTURAL, MORAL AND ETHICAL IMPERATIVES

by

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It has become quite familiar to us that the problem of international news and information flow is being intensely scrutinized at every major policy debate at the UNESCO and at the UN. The debate toward a policy, consequently, gave rise to immense scholarship in the academia and to periodic soul-searching in the Western media organizations.

Both the critics and proponents of the Third World lamentations on the dominance of the Western news organizations have been quick to produce or point out research (primarily centering on quantitative analysis of foreign news) to prove each other wrong.

What is less familiar to us is probably the fabric of moral, ethical, or philosophical frameworks being evolved to alter the perceived reality of the problem and to solve the crises in international relations at the broadest level. The debate has, in effect, engulfed the very instrument which has been the guiding principle for international conduct during the last four decades: the Universal Declaration of Human Rights.

In the process, several important concepts with regard to protection and promotion of communication rights have emerged. Most notable has been the continued formulation and exploration of the concept of the right to communicate. The paper contends that this right to communicate and its nascent formulation holds the potential for pragmatic policy-making in the years to come. The questions this paper addresses are: What implications does this emerging right have on established principles of international law and conduct concerning international communication? How does the concept differ from existing legal and ethical foundations which guide that conduct?

To answer these broad and general questions, the paper first discusses communication rights within the framework of human rights as espoused by the UN Charter and other main covenants in international law. This discussion is followed by an exposition of the current formulation of the right to communicate. In doing so, the author advances the intellectual foundations of several key scholars: Burguenthal and Gross on freedom of information at the international level and, Harms and Richstad on the synthesis of the right to communicate.

Presented to the International Communication Division, Association for Education in Journalism and Mass Communication National Convention, Corvallis, Oregon, August, 1983.

The Problem of International Discourse: Search for Cultural, Moral and Ethical Imperatives

The flow of news and information across national boundaries has been, for the last decade, a major issue in international policy debates at the United Nations. The debate has spread into almost every governmental and non-governmental organization which, in one way or the other, is involved with international communications: UNESCO, ITU, and regional unions around the world. The opinions aired by participating nations' representatives, scholars, experts, and the evidence of intense emotional overtones in the debate are explicit in almost all major documents produced in the past decade--Helsinki Agreement, UNESCO's resolution on uses of mass media, the ITU's World Administrative Radio Conference resolutions, and U.S. Senate Sub-committee on International Relations hearings and proceedings.

Compromises have been worked out, agreements--mostly bilateral--have been reached; and yet the debate itself rages on. In that process, the doctrine of free flow of information and the emerging "right to communicate" have come to occupy a central place in the ideological positions taken by various nations in the debate. The European scholar Martelanc aptly sums up:

> (The Right to Communicate) has its roots...in the tenet of the free flow, but it is accurate as well to claim that it was initiated by the resistance to the very same principle.[1]

The debate itself has highlighted the need for new international legal instruments to govern and oversee world communications. This stems from the evident belief that the current covenants which are repeatedly invoked in controversies regarding communication flow have become obsolete or inadequate and, that these covenants or instruments need to be re-examined and revised in view of changing world situation fostered by technological progress, rising power of the developing nations and uneven concentration of communication technology for transfer of information between nations.

This paper cannot possibly dwell on the entirety of the problems in international communication--that is, the causes for the debate, composition of ideological positions taken in the debate or the analysis of the problem itself. Rather, this paper intends to raise certain legal and philosophical aspects of an urgent issue in communications to the realm of academic discourse, to make familiar a different dimension in contemporary human rights--the right to communicate--and to explore the implications of this dimension which has, incidentally, become popular with the Third World for international legal instruments, covenants and existing agreements governing flow of news and information. For that purpose the paper will describe the nature of international law in the context of the traditional right of the freedom of information and national sovereignty, the consequent evolution and complexity of the emerging right to communicate. The paper will refer to the covenants and principles in international law which

are applicable to the concepts of freedom of information, the free flow of information and to the evolution of the right to communicate. The complications of such a philosophical pendulum swinging from concept to concept is much more serious with ramifications for parity in the present communication order.

Thus, while providing an overview of the legal framework which has bearing on communication rights, the paper will discuss the nature and basic principles of international law. Next, the adequacy and even legitimacy of freedom of information and its ancillary rights will be critically examined. Finally, the paper will provide the descriptive analysis of the nascent right to communicate in terms of its potential application as a norm to govern international communication. Towards the conclusion then, this question will be addressed to: how distinct is the right to communicate from other information rights which are in effect today?

The arguments cited here are by no means original in nature; they draw heavily from scholars who have provided a pioneering synthesis of a new area of study in human rights. I have made extensive use of the intellectual insight provided by Harms and Richstad into the right to communicate, and by Gross and Burguenthal into the relevance of international law specifically to communications rights.[2] Hence, the foundations provided by these scholars form the basis for the arguments in this paper.

Relevance of International Law to National Sovereignty and Information Flow

Traditionally, international law has been perceived as regulation of relations between nations. This definition is still pertinent because, in effect, nations have retained the capacity to make and unmake international law. However, it is now increasingly perceived that international law also extends beyond the boundaries to the micro-social element: the individual. With the onset of the industrial revolution in the West and the consequent increase in the movement of goods, persons and information across national boundaries, international law has been providing the instruments by which nations attempted to facilitate such transnational activities. If any transaction across the boundary of a country is to be regulated at all, the cooperation of two or more nations was the minimal expectation. Consequently, international law developed with and depended on the consent of two or more countries taking the form of bilateral or multilateral treaties which normally require ratification.

The very nature of international law demands the mutual consent or practice of two or more countries;[3] the consent of those particular countries is necessary so that the meaning of a written or unwritten principle or rule and its applicability to a given situation is determined. That particular consent or agreement between the countries is rendered binding by either a tribunal of arbitration or the International Court of Justice. It is necessary to have a common consent not only for the meaning but also for the interpretation and application of the rules

they create. It is, of course, inevitable that other countries do hold different interpretations, irrevocable sometimes, about their own rights and obligations to those of other countries. However, those views must be taken for what they are: views of interested parties. As such they are not binding on other nations. Before a tribunal or the Court they invariably become allegations and are treated as such. However, resort to a tribunal or the Court is rare today; nations prefer to seek settlement of disputed facts or principles by diplomatic negotiations or more often, simply postpone solutions.

One of the characteristics of nations, particularly those of the Third World, in modern international law is their strict devotion to independence or national sovereignty. This term has been often heard in present debate on free flow and frequently misunderstood. There are several interpretations of national sovereignty. One view is that sovereignty means "the State has over it no other authority than that of international law."[4] It naturally implies that states, though sovereign, are not above the international law but are bound by it.[5] Nevertheless, in the present debate at the UNESCO, one frequently encounters a notion, a lament, that the limitations which international law inevitably imposes upon countries are somehow contrary or incompatible with their perception of national sovereignty. Thus, the whole notion of a defined sovereignty has become a part of the scrutiny of communication rights. To make matters worse, conflicting views on sovereignty draw their strength in interpretations of the Charter of the United Nations itself--which in Article 2, declares that "the Organization is based on the principle of the sovereign equality of all its

Members," and that all members shall fulfill in "good faith" the obligations assumed by them in accordance with the Charter.

The duty to fulfill obligations in "good faith" applies, of course, not merely to the Charter but to very nature of international law. The 1969 Vienna Convention on the Law of Treaties incorporated in Article 16 the rule of international law: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." The Declaration on Principles Guiding Relations between Participating States in the Final Act of the 1975 Helsinki Conference Security and Co-operation in Europe, also provides in Section 10:

> The participating States will fulfill in good faith their obligations under international law, both those obligations arising from the generally recognized principles and rules of international law and those obligations arising from treaties or other agreements, in conformity with international law, to which they are parties. In exercising their sovereign rights, including the right to determine their laws and regulations, they will conform with their legal obligations under international law.[6]

It is also necessary to refer to the principle of domestic jurisdiction which may have a bearing on the freedom of information and the right to communicate. It is generally accepted that nations cannot invoke provisions of their internal law as justification for their failure to perform their obligations under treaties or under international law.[7] Otherwise, individual countries may find it easier to escape their obligations under international law by simply changing their constitution or amending their legislation. However, in the absence of applicable principles or rules of international law, nations are

free to exercise their sovereignty within their territory. The Permanent Court of International Justice in 1930 stated "restrictions upon the independence of States cannot...be presumed."[8] The principle of domestic jurisdiction was reinforced by the principle of non-intervention which found expression in numerous instruments including the Final Act of the Helsinki Conference.

Nevertheless, it is a relative principle. With the advent and development of conventional law (bilateral treaties, etc.), the dominance of domestic jurisdiction has been dramatically reduced. Matters of security, economics, communications and finally, of human rights, have become matters of international concern and regulation by treaty and by international law. The Permanent Court of International Justice once stated:

> The question whether a matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations.[9]

What falls within the domestic jurisdiction depends not merely upon the state of development of international relations but upon the nations concerned. Thus, for example, two or more countries may enter into an agreement concerning free flow of information, the gathering and transmission of news through specified media, or the admission or exchange of radio or television broadcasts. Once an agreement is reached, these matters are no longer within their respective domestic jurisdiction. But the same matters remain within the domestic jurisdiction of countries which have assumed no commitments in relation to other nations. It is always open to countries to enter into agreements

which serve their mutual interests. If there is no principle or rule by which a country binds itself in relation to another, it may admit or exclude reporters or radio or television broadcasts as it may exclude aliens or books or newspapers, so on and so forth.[10]

Some Implications for the Debate

At a time when development of modern international relations was taking place, the exchange of information, persons or goods--no matter in what quantities--was regarded mutually beneficial and was, consequently, executed in "good faith." But the political economy of these exchanges gave way to reasonable assertions of control and regulations on the part of the countries which were at a disadvantage due to dismal access to communication technology. Particularly after 1965, this issue has become a continuing bargaining process between pairs of nations, between groups of nations (like Great Britain and the Commonwealth or non-aligned nations, between the Western and Socialist blocs), and between other countries in the international system.

In this process, international organizations have played, and continue to play a vital part. They offer a convenient forum for large scale exchange of viewpoints. This is particularly true of the United Nations and, in matters of culture and communication, UNESCO. When deliberations in the United Nations or in UNESCO yield a convention or a treaty, such a convention or treaty will become binding on the nations which sign and ratify or accept them in a customary manner.

But on occasion, as a first step to a treaty, such as the UNESCO's Declaration on Use of Mass Media, the organization concerned merely adopts by the requisite majority a resolution or declaration.

The question then arises whether such resolution or declaration is binding on all members or only on those who voted for them. There is also the question whether resolutions, such as the 1948 Universal Declaration of Human Rights (UDHR), are or have become part of international law and therefore binding on all nations--more than half of whom have not been signatories to the covenant. This question is of fundamental importance as Article 19 of the UDHR proclaims the freedom of information which is regarded as the legal basis of the flow of information through all media across national boundaries.

The Traditional Right--Freedom of Information

In the current debate on information rights, Article 19 of the UDHR occupies a central place. It states:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In its ordinary meaning, and excluding the contemporary interpretation being witnessed in current debate, this clause establishes one world for the purpose of receiving and imparting information as an individual right. It is clear, from the text at least, that there was no intent here to promote a one-way flow of information; on the contrary, equal flow in all directions and regardless of frontiers was

the intended objective. Article 19 was not designed merely to ensure unobstructed flow of information within the law of the sending and receiving countries. Interestingly, the current debate has raised several important questions. Are the technologically advanced countries adhering to Article 19 in "good faith" as required by international law? If they maintain they are, how come there is such a disparity in the flow of information internationally today? Is Article 19 even relevant to present times? Can the Third World nations without equal access to communication technology and clearly at an economically disadvantaged position invoke Article 19 for articulation of their grievances?

Thus, the entire scope of the said Article in the UDHR has come under scrutiny that we witness today. Morever, the Third World argument that overabundant flow of foreign material through media has affected maintenance of cultural integrity cannot draw inspiration from Article 19. This condition, in fact, is laid down in Article 29 of the UDHR[11] but frequently overlooked.

Article 29 reads as follows:

> (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
> (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
> (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Consequently, when we talk about the freedom of information we turn first to the Universal Declaration of Human Rights and its Article 19. The other articles of the UDHR must also be studied for their relevance to communication rights. Notably, the principle is also endorsed in the UNESCO Constitution (Preamble and Art. I)[12] and in various UN resolutions, among them General Assembly Resolution 59 (I) of December 14, 1946, which declared that "freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated."[13]

Many nations accept in principle the right to receive and impart information across national boundaries as an internationally protected fundamental human right. There is, however, a substantial disagreement about the right's limits and competence.[14] This disagreement in essence, manifests itself strongly in the UNESCO debates, in drafting international instruments on freedom of information in the form of conventions or declarations, and in the divergent assertions of governments about their rights and obligations whenever the issue of freedom of information is raised in an international forum.[15] The assertions most commonly heard--some reflected in national laws--are that the right to freedom of information may legitimately be restricted in the interest of national security, for the protection of public order, to safeguard the rights of others, to prevent the disclosure of confidential information, or to protect the integrity of national cultures. Some Third World governments have claimed that the right to receive and impart information

across national boundaries does not extend to propaganda for war, to the advocacy of national racial or religious differences, to interference in domestic affairs, to communications calculated to disrupt friendly relations between countries, to misinformation, to portrayals glorifying violence, and to advertisements.

For instance, this approach is evident in the UNESCO Draft Declaration of Fundamental Principles Governing the Use of the Mass Media in Strengthening Peace and International Understanding and in Combating War, Propaganda, Racism and Apartheid and Incitement to War submitted to the UNESCO General Conference at its Nineteenth Session in Nairobi in 1976.[16] The declaration emphasized national sovereignty, non-interference, "the existing disequilibrium in the circulation of information: from developing countries and the achievement of "a balanced exchange of information" (Article IV). The draft called on "professional organizations in the field of mass communication to define and promote standards of professional ethics on a national and international level" (Article XI). Later, a compromised draft declaration was adopted in Paris at UNESCO's 20th General Conference in November 1978. Some parts of the original draft declaration reflect the modern-day implications of the principles of international law discussed earlier. It is also indicative of a strong tendency in the direction of the right to communicate.

Birth of a Dynamic Concept

Thus, the inadequacy of existing agreements to govern international

communications and the attempts to find a solution to rectify the situation have given rise to the concept of the right to communicate. Understandably, the concept itself is short of a clear definition. And inevitably, this emerging right will have an impact on the present character of international law and covenants regarding the flow of information. Is such a right necessary? Why is Article 19 of the Human Rights Declaration no longer sufficient? What has changed since it was adopted in 1948?

The intellectual stimulation regarding this concept of right to communicate has been far-reaching. Optimism over the redeeming value of this right has reached such an extent that even policy-making organizations themselves--like the UNESCO and ITU are involved in its concrete formulations. MacBride, for instance, outlining the recommendations of UNESCO-appointed Commission for the Study of Communication Problems noted:

> "Communication needs in a democratic society should be met by the extension of specific rights such as the right to be informed, the right to inform, the right to privacy, the right to participate in public communication--all elements of a new concept, the right to communicate. In developing what might be called a new era of social rights, we suggest all the implications of the right to communicate be further explored."[17]

Once again, it is hardly surprising that the touchstone for dialogue on, and study of, the right to communicate has been Article 19 of UDHR. As Harms and Richstad document, this right conserves some of the components of Article 19, incorporates components from other articles of the Declaration and adds important components not currently found in

that document. The methods used to develop the right to communicate concept include both dialogue and studies. The most visible and best documented of these dialogues have taken place at international meetings such as those of UNESCO and of the Hawaii-based East-West Center for Communication Study. These dialogues have been ongoing in the sense that the participants from several countries have been able to meet from time to time to further refine the concept. In addition, at the national level for instance, in Canada, Sweden, Yugoslavia and India, similar dialogues have been under way, and there has been some interaction between the international and national activities. From the outset of international dialogue and study on the right to communicate, the intent has been to evolve a comprehensive and multicultural concept. In the early years of this effort, attention was focused on identifying and understanding the various perspectives, viewpoints, and outlooks that might contribute content to the right. More recently, attention has focused on the organization of this content into a widely acceptable worldview of the right.

The attraction to this concept by the Third World is partly due to its emphasis and articulation of human rights. As can be expected from the human rights tradition, Harms and Richstad synthesized, two perspectives or themes have been prominent in the formulation of the right to communicate. The first of these themes presents a comprehensive perspective on morals and ethics, the content of culture, and implicit communication policy. The second theme provides a multi-tier perspective

on components of the right to communicate such as a right to participate and a right to inform, the content of regulations and law, and explicit communication policy. Thus, this dynamic right has become a compelling, broad moral theme and indeed, more practical. By intent, the proposed formulation parallels Article 19 of the UDHR. The opening phrase is comprehensive and inclusive; the remaining text lists a number of component rights and suggests a line of action.

Harms lists them as follows and will be discussed later:

> Everyone has the right to communicate; the components of this comprehensive Human Right include but are not limited to the following communication rights:
> - a right to assemble, a right to participate, and related association rights;
> - a right to inform, a right to be informed, and related information rights; and
> - a right to privacy, a right to language, and related cultural evolution rights.
>
> Within the world communication order, the achievement of a right to communicate requires that communication resources be available for the satisfaction of human communication needs.

This working formulation is intended to set forth a comprehensive right to communicate. It should be noted that the phrase "everyone has the right to communicate" extends and makes interactive the earlier phrase "everyone has the right to freedom of opinion and expression" of Article 19 while retaining its inclusive cultural thrust. The formulation also conserves the information components of Article 19 while incorporating components from other Articles as Article 20 in the Declaration such as a right to assemble and a right to participate and a right to language. It also permits the introduction of new communication rights such as a right to be selective, a right to "co-create" information, and a right to be entertained.

What follows is the most concise and descriptive analysis put forward by Harms and Richstad. The claim that communication must be interactive and participatory has been at the heart of the right to communicate dialogue and study. For this reason, certain aspects of Article 20 of the UDHR on human association, particularly a right to assemble, have been included in this working formulation. Further, the widespread and Third World insistence on active participation in the communication process leads to a new communication right: a right to participate. The general demand for interactive and participatory communication requires a number of component rights that can be organized under association rights.

According to Harms and Richstad, these association rights are of importance for both the small talk of everyday life and for the long-term dialogue necessary to formulate ideas--the right to communicate itself stands as a witness--to multicultural dialogue. The rights of association are critically important to the one-half of the world's adults who are not literate, and to people who do not have access to needed information from any reliable means except via interpersonal communication.

The area of information rights has, in recent years, received most of the attention. While Article 19 boldly claims that everyone has the right to seek, receive, and impart information, the critical examination of information imbalance leads to the observation that to a very great extent Article 19 has been a receive-only right in practice.

There are and can only be a few sources of information transmission while there are many millions of receivers. In the new formulation, the rights to inform and to be informed are understood to be active rights. The information imbalance efforts have been centered on the formal information flows, on news information and to a lesser extent on scientific information. But if a right to inform is to be an active right, not only for professional communicators but for everyone, the structures of the current mass media will have to be transformed into two-way services. This is a key point and one that is difficult to comprehend from the mass media perspective implicitly found in Article 19.

Cultural evolution rights, according to the Harms-Richstad synthesis, is historically the newest, the least defined, and the most directly related to media and cultural imperialism and communication dominance. It includes a right to privacy and expands that right to cover not only individuals but also cultural communities; human groups have also a right to be let alone. A right to language is included in recognition of the cultural implications of language for small countries and for minorities in large countries. The argument is that all cultures have a right to evolve in terms of their own inherent values without either being swamped by information from the outside or deprived of external or internal information needed to nourish and enrich indigenous traditions. In this special sense, then, everyone has a right not to communicate.

Freedom and Responsibility

The three communication rights areas of association, information and cultural evolution--and the components included in them--have contingent freedoms and responsibilities. Specifically, the exercise of a component communication right requires freedom and imposes responsibility. Consideration has been given to the expanding dimensions in an interdependent world of both freedom and responsibility, and to the interactions between them. As the balance between freedom and responsibility is worked out for a communication right in a given context, issues will arise that require policy actions for their resolution.

The Harms-Richstad synthesis also notes that the term Human Rights is often expanded to rights and freedoms, or rights and responsibilities. In the proposed conceptual framework, each right is qualified both by contingent freedoms and responsibilities. This approach appears to bypass some of the artificial difficulties that arise when the term right is used in two ways at two different conceptual levels, that is, as a Human Right, and as a contrasting term for either the term "freedom" or the term "responsibility." Moreover, the working formulation cited by Harms illustrates that an emphasis on one component right will have an impact on other component rights. For instance, the exercise of a right to inform--at individual, community, national, and international levels--will have impact on the information rights of others, often at a different level and in a distant part of the world. Equally, the exercise of a right to participate will have an impact on a right to privacy.

The translation of the right to communicate into concrete application will depend on communication policy. Some of that policy will be explicit and will find expression in international law. But, of equal and perhaps greater importance, some of that policy will be implicit and expressed as cultural values. Thus, the two fundamental themes in the Human Rights tradition again find expression in the requirements for the right to communicate.

There are other reasons for the birth of this concept in communication rights. When the Universal Declaration of Human Rights was adopted in 1948, a few could foresee developments in communication occurring so massively and with such rapidity that the changes in communication systems around the world would bring about radical transformations in the communication perspectives and potentials of the individual, media institutions and nations. Only since the 1960s have these changes become clear in their possible implications for communication at all levels--especially at the global level. Although the international aspects have no doubt triggered the initial discussions regarding the concept, gradually it became apparent that the right to communicate belonged as much to disadvantaged persons as to disadvantaged countries. Hence, a growing shift of emphasis from a seemingly exclusive preoccupation with the international aspects to the individual. This shift finds a precedent in the evolution of contemporary international law itself.

Status of the Right to Communicate

When the concept of the right to communicate was first proposed by Jean d'Arcy in 1969, the need for such a right was largely related

to the communication "revolution" which was transforming societies' ability to interact with one another. Soon after that, some 40 studies were undertaken by the Canadian Telecommission, which consequently set the first comprehensive parameters to a right to communicate--"the right to hear and be heard, to inform and to be informed together may be regarded as the essential components of a 'right to communicate.'" D'Arcy and others cite these reasons for the emergence of the new right: the growth of new communication technology that has opened new possibilities for increased exercise of freedom and which has resulted in abundance of communication channels in a field in which scarcity has generally been the rule, an increasing awareness of the role of communication in society, a changing view of the communication process "globalization" of communication requiring broad-based communication principles and practices, the emergence of a politically and socially active Third World, increasing recognition of the interdependence of issues, cultural pluralism, the recognition of the role of the individual and community in development--all of which are now being discussed independently as well as interrelatedly. The framework of the emerging right draws its strength from these changes. Under the rubric of this right an essential change that has occurred in the concept of international communication: that it is seen as a participatory and interactive process; a process of social interaction through a balanced exchange of information and experience. This change contains several elements which many view as fundamental to the right to communicate. These include the idea of an equitable exchange or sharing process,

and the capacity for dialogue, and active participation in the communication process. It has also been suggested that this may be seen as indicating a "demonopolization" and perhaps "deprofessionalization" of the media.

Technology as a Factor

The Harms-Richstad synthesis also suggests that communication technology, however, remains central to the understanding of the difference between the concept of the free flow of information and the right to communicate. As already suggested, technology has made it possible for advanced nations to have a potential abundance of the means of communication. This has led to a complete rethinking of the patterns that have developed in many media. Radio and television broadcasting, for instance, had been placed under regulatory systems based on the fact that communication resources were scarce and that they seemed to have the potential for tremendous impact on audiences. The world is now technologically capable of providing an abundance of the means of communication, although many parts of it still continue to be in an environment of scarcity for economic and other reasons. Advanced technologies are not always seen as universal blessings. The danger of "information overload" is often cited as an indicator of this. There is also deep concern that such developments have resulted in communication domination by a few powerful States with advanced technology.

As a consequence, there is also an increasing concern among Third World and other countries over the "one-way" flow of information.

Tomo Martelanc maintains that there is a "love-hate" aspect to the free flow principle; the right to communicate, he observes, had "its roots...in the tenet of the free flow, but it is accurate as well to claim that it was initiated by the resistance to the very same principle." The new right is born with the belief that changes are needed to correct the perceived inequities in the international communication system, and that the right to communicate elements of mutuality, exchange, equity, and participation could bring about the needed changes. The transnational communication corporations have been a special target of criticism along with the "Big Five" news agencies whose structures and activities have pointed, perhaps more clearly than any other single factor, to the need for clear enunciation of the concept of the right to communicate and the steps to be taken to make its exercise feasible.

The Harms-Richstad synthesis aptly suggests that this linking of the right and the means by which it can be exercised clearly shifts emphasis from the "freedom" concept to the "right" concept. A freedom may mean that a person can do something without interference, but a right means a person can do it not only without interference, but that there is an obligation on someone or some agency to make exercise of that right possible. This is a large step in international communication.[18]

The synthesis also raises one of the most persistent questions concerning the right to communicate: simply, where is the right vested? Is it vested in the individual, is it vested in the community, in the nation, or where? It is significant to note that the discussions

on the right to communicate have, perhaps for the first time, brought into focus this fundamental question of where human rights are vested. Attempts are being made to determine the priorities of the components of the right at various levels. Present thinking suggests that the right to communicate has meaning at all three levels--at the individual level, in a human rights sense; at the community or group level in a social context, in recognition that communication is a social process; and at the national level, in the sense of relations with other nations through international communication. It is important to note that priority given to various communication rights at the three levels reflects different political, ideological and socio-cultural perspectives.

Closely related to the individual and community concepts of the right to communicate is the growing recognition of a right to culture, or more particularly, as Article 27 of the Universal Declaration of Human Rights notes, "the right to participate in the cultural life of society, to enjoy the arts and to share in scientific advancement and its benefits." Other rights in the UDHR that are closely related to an individual and community concept of the right to communicate have been mentioned earlier.

Many of the right to communicate principles are applicable to nations in dealing with other nations. Three of the major issues to which the concept has been applied are: (1) the one-way flow of information and entertainment; (2) the perceived negative impact of material from outside a culture on the indigenous; and (3) the dependency relationships that result from the control mechanisms of the flow of news

communication technology and program materials. Other examples of international issues where there are varied political and socio-cultural perspectives include the importance of content and quality in the flow, the definition of "news," and the role of information in society.

Complexity of the Concept

The Harms-Richstad synthesis correctly points out that at this time, the right to communicate still seems to be an emerging and evolving concept. The complexity, difficulty and importance of developing clearer definitions of terms and concepts of the right, its components, and its relationships are recognized. There is therefore, the danger of possible misuse and manipulation of the definition unless a comprehensive formulation is soon evolved. However, the more rigid and narrowly defined the concept becomes, the greater the possibility of provoking differences. The UNESCO document (19C/93) of 1976 has a pertinent passage: "Some caution against any premature attempt to codify a right to communicate, noting that future developments in both technology and policy will require constantly reviewed assessments of the communication needs of societies and individuals."[19]

The Harms-Richstad synthesis also notes two elements in the concept of the right to communicate that distinguish it from earlier rights and concepts. The two elements are that "communication is used instead of information," and that "needs that must be satisfied are used instead of

certain natural human rights that require legal protection."[20] Fisher, who argued for systematic organization of the right, says: "What needs to be done...is to state the existence of the right to communicate; to define or describe what is meant by communication; to explain its significance as a basic human need and therefore a basic human right."[21] His conceptualization is that the right to communicate is a basic human right, and from that basic human right other rights are derived, such as freedom of information, freedom of expression and of the press, and freedom of opinion.

Access and active participation in the communication process, as discussed, are main ingredients in the right to communicate. Interwoven through these concepts are the right to know, freedom of information, the right to hear and be heard, and the concepts of mutuality and equity in the communication process. The new technology permits use of communication media for widespread individualized use, and gives the freedom to seek or choose from alternatives rather than the passive "receive-only" status. Both the word "active" and "participation" are stressed.

Access here is used three ways: access to use of communication services (the availability of radio, television, newspapers, telephone, etc.), access to communication media (the ability to use the media for messages and other communication) and access to information (the ability to obtain information from specified sources). Active participation is used in three ways: active participation in the communication process, active participation in the planning and production of media materials, and active participation in the formulation of communication policies.

Participation is seen as essential if there is to be mutuality, and a balance or exchange of information, as well as a wider choice of mass media materials.

The Harms-Richstad synthesis also observes that the advantages in the new technologies are tempered in part by concerns over threats to individual and group privacy, to cultural integrity, and to the need to be left alone. From the beginning, concern for privacy, cultural preservation, and information overload was built into the right to communicate concept. A right not to communicate, including privacy and protection of culture, is seen as a necessary part of the right to communicate. If there is a right of access to information, there is a balancing right not to be "accessed." At the individual level, the right not to communicate is equivalent to a right to privacy; at the community and national level the concept of this right is the right to protect cultural integrity. Several Articles in the Universal Declaration of Human Rights point to the possible existence of some elements of the right not to communicate. Article 20, for example, declares that "no one may be compelled to belong to an association;" Article 12 says: "No one shall be subjected to arbitrary interference with his privacy...or correspondence..." and Article 18 states: "Everyone has the right to freedom of thought..."

Cultural preservation, the Harms-Richstad synthesis correctly points out, is a strongly protective stance taken by many nations and communities against the dangers of being swamped culturally by outside

communication flowing into the country or community. Much of the concern over free flow, for example, centers on the damage or potential damage to indigenous culture. Another issue is how the new technology and right to communicate concepts can be used in a positive way to strengthen or revitalize cultures. In sub-national groups, the principle of cultural diversity has sometimes raised the question of the need to protect the weaker groups from the culture of the stronger groups in society. In industrially developed countries, the emphasis on communication is more on preserving and expanding cultural diversity, while in developing countries, it is more on forging national unity, which in some cases means the pulling together of diverse cultural groups. Thus, we come back to the whole concept of sovereignty, specifically as it concerns the inflow and outflow of communication, and may be seen as a form of cultural preservation.

One of the key issues concerning the right to communicate, as indicated earlier, involves the attributing of responsibilities and duties of communication to individuals, groups and nations. Deep differences exist over responsibility in international communication. Other differences are evident at community levels over the role and responsibility of the mass media in the community. The future use of the communication satellite for direct broadcasting, for example, demonstrates how the new technologies can become deeply involved in questions of responsibility. In a UNESCO survey on the right to communicate, it was found that there was a "general recognition of the

responsibility and accountability of communication media to society." And it was also noted that "Consideration of possible normative actions and the development of ethical standards and practices relating to the use of the media and professional responsibilities could also be undertaken within the framework of studies on the right to communicate."[22]

The Harms-Richstad synthesis also suggests that the focus on responsibilities in communication is on the mass media and the professional communicators. The importance and persuasiveness of the mass media should foster both legal and social responsibilities. In developing countries, there is greater stress on media responsibility toward economic and social development and national unity than in developed countries where the emphasis would tend to be more on cultural and political diversity. Although there is not yet an agreement, efforts have been made to develop a code of ethics and responsibility in international communications. There have, however, been serious differences among nations because of their different conceptions of the responsibility of the states and of the media. These differences seem fundamental to the nature of societies, and are not expected to change immediately. But it should be noted that the 1948 Geneva conference on freedom of information stated:

> The right to freedom of expression...confers upon all who enjoy it the moral obligation to tell the truth without prejudice and to spread knowledge without malicious intent, to facilitate the solution of the economic, social and humanitarian problems of the world as a whole through the free interchange of information bearing on such problems, to help promote human rights and fundamental freedom without arbitrary discrimination,

> to help maintain international peace and security and to counteract the persistent spreading of false or distorted reports which provoke hatred or prejudice against States, persons, or groups of different race, language, religion or philosophical conviction, confuse the peoples of the world, aggravate relations between nations or otherwise threaten and destroy the fruits of the common victorious struggle of nations against the aggressions during the last world war.[23]

This approach begat the concept of freedom of information and reinforced its legitimacy in the present communication order. But great difficulties were encountered in this type of approach and little progress has been made.[24] The concept of the right to communicate perhaps offers the possibility of wider accord on the rights and responsibilities of the mass media, and could provide the kind of ethical and even legal framework for solving problems in international and national communications.

Communication needs in any democratic society must indeed be rooted in specific rights such as the right to be informed, the right to inform, the right to privacy, the right to participate in public communication.[25] As the MacBride Commission observed, in developing a new era of social rights, all implications of the right to communicate must be explored further if there is to be a fairness doctrine in international communication.

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3. Separate Opinion of Judge Anzilotti in the Austro-German Customs Union case (1931), Publications of the Permanent Court of International Justice, Series A/B, No. 41. p. 57. Gross, Ibid., p. 5.

4. In a document prepared for the U.N. General Assembly by the International Law Commission, this point was formulated as follows:

   > "Every State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law."
   >
   > Draft Declaration on Rights and Duties of States, Article 14, GA Res. 375(IV), of December 6, 1949, Annex.

5. Department of State Pub. 8826. General For. Pol. Series 298, August 1975, p. 82, Gross, op. cit.

6. This principle is incorporated in Article 27 of the 1969 Vienna Convention on the Law of Treaties, Gross op. cit.

7. Quoted by Gross, op. cit., p. 8, The Greco-Bulgarian "Communities" case, Advisory Opinion of the P.C.I.J., 1930. Publications of the P.C.I.J., Series B, No. 17, p. 32, Gross, op. cit.

8. Tunis-Morocco Nationality Decree case, Advisory Opinion 1923, Publications of the P.C.I.J., Series B, No. 4, p. 24. Gross, op. cit., p. 9.

9. Gross, op. cit., p. 10.

10. Article 29 reads as follows:

> (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
> (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

11. U.N. Charter, Arts. 55 and 56. The promotion of human rights is moreover, one of the proclaimed purposes of the U.N. See U.N. Charter, Art. 1(3).

12. The UNESCO constitution was signed at Paris on November 16, 1945; entered into force on November 4, 1946.

13. H. Eek, Report on Developments in the Field of Freedom of Information Since 1954, UN Doc. A/3443, para. 41 (1961).

14. On this subject, see Secretary-General, Freedom of Information, UN Doc. A/8340 (1971); Secretary-General, Draft Convention on Freedom of Information, UN Doc. A/AC.105/WG.3/L.2 (1973); 13 M. Whiteman, Digest of International Law 909-919 (1963), op. cit.

15. See, e.g., the 1972 debates in the UN General Assembly on direct satellite broadcasting, UN Docs. A/C.1/PV./1861-1871 (1972); and A/PV.0201 (1972); and UNESCO general conferences from 1971 to 1978. Docs. 16C to 19C, 20C, 1978.

16. UNESCO Doc. 19C, 19C/91, 1 July 1976. This declaration was adopted with some modifications on November 18, 1978 at the 21st General Conference in Paris.

17. See, Many Voices, One World: Towards a New, More Just and More Efficient World Information and Communication Order, Report by the International Commission for the Study of Communication Problems, (New York: Unipub, 1980), Recommendation No. 54., p. 265.

18. These factors have been discussed elaborately by well-known scholars from all over the world. See Jim Richstad and L. S. Harms and others, Evolving Perspectives on the Right to Communicate, (Honolulu: East-West Communication Institute, 1977, Distributed by the University Press of Hawaii. Most of my observations here are synthesized from conversations with Jim Richstad and L. S. Harms last winter. See also UNESCO Doc. CC/78/CONF.630/2 (1978) in which Richstad puts forward a splendid analysis of the right to communicate from which I cite extensively. See also, Henry Hindley, "Communication Rights in an Instant World" (Selected excerpts from Instant World). In Collected Papers, op. cit.

19. See UNESCO's 19th General Conference, Nairobi, 1976, Doc. 19C/93, op. cit.

20. Jersy Mikulowski Pomorski, "Right to Communicate: National Legislation or International Policy?" Paper for International Institute of Communications meeting, September 1975, Cologne. In Collected Papers, op. cit.

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22. UNESCO Doc. 19C/93, op. cit.

23. Quoted by Richstad, op. cit.

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25. Many Voices, One World, op. cit., p. 265.